

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ACADIA INSURANCE COMPANY, as  
Subrogee of St. Paul Street, LLC  
1 Acadia Commons  
Westbrook, ME 04908

Plaintiff

v.

NER CONSTRUCTION MGMT., INC.  
867 Woburn Street  
Wilmington, MA 01887

MAGISTRATE JUDGE Alexander

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Acadia Insurance Company, as Subrogee of St. Paul Street, LLC, by and through its attorneys, upon information and belief, hereby alleges the following:

**PARTIES**

1. Plaintiff, Acadia Insurance Company (hereinafter "Acadia"), is a Maine Corporation, with its principal place of business located at 1 Acadia Commons, Westbrook, Maine, and at all times material hereto was authorized to issue insurance policies in the Commonwealth of Massachusetts.
2. At all times material hereto, Acadia insured St. Paul Street, LLC (hereinafter "St. Paul Street"), for its real and business property located on St. Paul Street in Brookline, Massachusetts.
3. Defendant, NER Construction Mgmt., Inc. (hereinafter "NER"), is a Massachusetts Corporation, with a principal place of business located at 867 Woburn Street in Wilmington, Massachusetts, and at all times material hereto, was engaged in the business of roofing contracting and construction management.

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CIVIL ACTION NO.

RECEIPT # 10782  
AMOUNT \$ 50  
SUMMONS ISSUED YES  
FEDERAL RULE 4.1     
WAIVER FORM     
MCF ISSUED     
BY DPTY. CLK. FOW  
DATE 12/7/04

### **JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court because plaintiff and defendant are citizens of different states and the amount in controversy, exclusive of costs and interest, exceeds the sum of \$75,000.00.

5. Venue is properly laid in this judicial district because the incident giving rise to this lawsuit occurred in this district.

### **FACTUAL ALLEGATIONS**

6. At all times material hereto, St. Paul Street owned the real property and was constructing condominiums on St. Paul Street in Brookline, Massachusetts (hereinafter "the Property").

7. Prior to January 31, 2004, St. Paul Street contracted with defendant NER to do all of the roofing work at the Property.

8. Defendant NER stored flammable solvents and roofing materials in the basement of one of the condominiums at the Property.

9. Defendant NER did not have a permit to store these flammable materials as was required by various state and local codes.

10. On or about January 31, 2004, while construction was still ongoing, a fire erupted in the basement of the one of the condominiums on the Property (hereinafter "the Fire").

11. The cause of the Fire is unknown.

12. The Fire ignited flammable materials which were being stored by defendant NER in the basement and quickly spread throughout the Property. The presence of these flammable materials permitted the fire to spread uncontrolled to other areas of the Property.

13. Pursuant to the terms of the insurance policy, plaintiff Acadia paid out an amount in excess of Seventy Five Thousand Dollars (\$75,000.00) to reimburse St. Paul Street for the

damage to the Property and also for business losses resulting from the delay in completing the Property due to the Fire.

14. In accordance with the common law principles of legal and equitable subrogation, Acadia is subrogated to the rights of its insured, St. Paul Street, with respect to the damages compensable under the policy.

**COUNT I: NEGLIGENCE**

15. Plaintiff incorporates the previous allegations by reference as though fully set forth herein at length.

16. The fire spread and the resulting damages to the Property were caused by the negligence, carelessness, recklessness and/or gross negligence of defendant NER, its agents, servants and/or employees acting within the course and scope of their employment or agency, in:

- (a) causing and/or permitting the Fire to spread;
- (b) permitting and allowing an unsafe, dangerous and hazardous accumulation of flammable and/or combustible materials;
- (c) failing to obtain proper permits for the storage of flammable and/or combustible materials;
- (d) failing to store flammable and/or combustible materials in proper storage facility;
- (e) failing to provide and observe adequate safety rules and regulations on the job site;
- (f) failing to properly educate, warn and advise employees of the fire hazard presented by the improper use and/or storage of the flammable and/or combustible materials being stored at the Property;
- (g) disregarding explicit warnings on product containers regarding the hazards presented by the improper use and/or storage of the flammable and/or combustible materials;
- (h) failing to take proper and adequate precautions to protect the Property from fire or the hazards of a fire;

(i) failing to maintain and store its supplies in a safe and proper condition to avoid an unreasonable risk of a fire;

(j) storing and maintaining combustible materials in violation of applicable codes, statutes and/or ordinances; and

(k) such other and further negligent acts or omissions which may be revealed during the discovery process.

17. As a direct and proximate result of the aforesaid negligence, carelessness and/or negligent acts and/or omissions of defendant NER, the Fire spread throughout the Property and resulted in substantial damages to plaintiff's insured.

WHEREFORE, plaintiff, Acadia Insurance Company, as Subrogee of St. Paul Street, LLC, demands judgment in its favor and against defendant, NER Construction Mgmt, Inc., in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) together with interest and costs of this action.

#### **COUNT II: BREACH OF WARRANTIES**

18. Plaintiff incorporates the previous allegations by reference as though fully set forth herein at length.

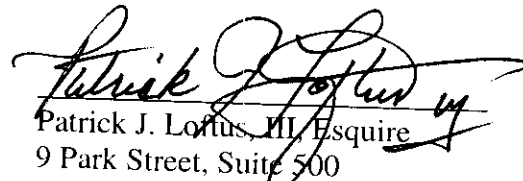
18. The fire spread and resulting damage and destruction to the Property was caused by and resulted from the breach by NER, by and through its agents, servants, subagents, representatives, workman and/or employees, acting within the course and scope of their employment, of express and implied warranties to perform the aforementioned work in a professional and workmanlike manner by failing to properly store and maintain its flammable and/or combustible supplies in a safe and proper manner and in a manner which would be fit and expected of contractors in NER's area of expertise.

19. As a direct and proximate result of NER's conduct in breaching the aforesaid express and/or implied warranties, plaintiff's insured suffered substantial damage.

WHEREFORE, plaintiff, Acadia Insurance Company, as Subrogee of St. Paul Street, LLC, demands judgment in its favor and against defendant, NER Construction Mgmt, Inc., in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) together with interest and costs of this action.

**Plaintiff demands a trial by jury as to all counts of this Complaint.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick J. Loftus, III", is written over the printed name and address.

Patrick J. Loftus, III, Esquire  
9 Park Street, Suite 500  
Boston, MA 02108  
617-723-7770

Co-Counsel  
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1900 Market Street  
Philadelphia, PA 19103  
(215) 665-2000  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

- 04 12557-001
1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) ALADIA INS. COMP. V. NER CONSTRUCTION MGMT, INC.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 730, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).  
N/A
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?  
N/A
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST?  
N/A
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) \_\_\_\_\_
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?  
N/A
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES \_\_\_\_\_
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES NO (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? \_\_\_\_\_
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Boston
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION N/A OR WESTERN SECTION \_\_\_\_\_

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME PATRICK J. LOFTUS, IIIADDRESS 9 PARK STREET, SUITE 500 BOSTON, MA 02108TELEPHONE NO. 617-723-7770

JS 44  
(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

ACADIA INSURANCE COMPANY a/s/o  
ST. PAUL STREET, LLC

## DEFENDANTS

NER CONSTRUCTION MGMT., INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PATRICK J. LOFTUS, III  
9 PARK ST. SUITE 500  
BOSTON, MA 02108  
617-723-7770

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |  |   |   |
|---|--|---|---|
| Citizen of This State                   | PTF <input type="checkbox"/> DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | PTF <input type="checkbox"/> DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2       | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5       |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3                  | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6       |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

28 USC 1332(a)(1)

## V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT